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8 **UNITED STATES BANKRUPTCY COURT**  
9 **DISTRICT OF NEVADA**

10 In re:  
11 PAUL A. MORABITO,  
12 Debtor.

Case No.: BK-S-13-51237-GWZ  
Chapter: 7  
  
Hearing:  
Date: February 4, 2021  
Time: 10:00 a.m.

13 **REPLY TO OPPOSITION TO MOTION FOR AN ORDER IMPOSING SANCTIONS**  
14 **AGAINST JEFFREY HARTMAN, ESQ. AND HARTMAN & HARTMAN AND DAVID**  
15 **HOUSTON, ESQ. AND THE LAW OFFICES OF DAVID R. HOUSTON**  
**PURSUANT TO BANKRUPTCY RULE 9011**

16 JH, Inc. (“JH”), Maryanna Herbst as Trustee of the Herbst Family Trust dated December  
17, 2002 (“Trust”), and Berry-Hinckley Industries (“BHI” and together with JH and the Trust,  
18 the “Herbst Parties”), and Timothy P. Herbst, Troy D. Herbst, and Edward J. Herbst (together,  
19 the “Additional Defendants,” and with the Herbst Parties, the “Herbst Defendants”), by and  
20 through their counsel, the law firm of Garman Turner Gordon, hereby respectfully submit their  
21 reply (the “Reply”) to the *Opposition to Motion for an Order Imposing Sanctions Against Jeffrey*  
22 *Hartman, Esq. and Hartman & Hartman and David Houston, Esq. and the Law Offices of David*  
23 *R. Houston Pursuant to Bankruptcy Rule 9011* [ECF No. 1135] (the “Opposition”), filed by  
24 Robison, Sharp, Sullivan & Brust (“Robison”) on behalf of Jeffrey Hartman, Esq. and Hartman  
25 & Hartman (collectively, “Hartman”) and David Houston, Esq., and the Law Offices of David R.  
26 Houston (collectively, “Houston”) on December 15, 2020.

27 This Reply is made and based upon the following Memorandum of Points and  
28 Authorities, the declaration of Gerald M. Gordon (the “Gordon Declaration”) filed herewith, the

1 pleadings, papers, and other records on file with the clerk of the above-captioned Court, judicial  
 2 notice of which is requested, and the argument of counsel at the time of the hearing of the  
 3 Sanctions Motion.<sup>1</sup>

4 **I.**  
 5 **LEGAL ARGUMENT**

6 **A. The Opposition Makes Clear that Ordering Hartman and Houston to Pay the**  
 7 **Attorneys' Fees and Expenses of the Herbst Defendants' Related to the Rule 9011**  
 8 **Pleadings is Necessary and Appropriate.**

9 In the very opening of the Opposition, Robison states:

10 Attorneys hold a cherished and crucial position in the administration of justice.  
 11 Every attorney must recognize inescapable and unavoidable duties of loyalty to  
 12 their client. While honoring duties of loyalty and pursuing zealous representation  
 13 of clients, attorneys cannot and should not be permitted to abuse the system of  
 14 justice through unnecessary, vexatious or unfounded procedural machinations.  
 15 As officers of the court, attorneys owe the system, the courts, their clients and the  
 16 public respect, dignity and integrity.

17 Thereafter, Robison argues that this Court should deny the Sanctions Motion because  
 18 Hartman and Houston were already reprimanded by this Court and “[t]his Court’s reprimand was  
 19 constructive and certainly served to deter each attorney watching the hearing from filing  
 20 anything that could be construed as improper.” See Opposition, p. 17. However, the Opposition  
 21 itself evidences the falsity of Hartman and Houston’s contention.

22 **1. The Opposition Doubles-Down on Spurious Attacks and False Statements.**

23 The Opposition attacks the Herbst Defendants and their counsel and includes material  
 24 misstatements of fact for which the truth is readily apparent. It is the height of hypocrisy to set  
 25 forth the standards required of attorneys and state that Houston and Hartman have been  
 26 sufficiently reprimanded by this Court, while, at the same time, continuing to perpetuate false  
 27 statements and introducing newly concocted falsehoods. What is it about representing Paul

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28 <sup>1</sup> “Sanctions Motion” as used herein shall refer to the *Motion for an Order Imposing Sanctions Against Jeffrey Hartman, Esq. and Hartman & Hartman and David Houston, Esq. and the Law Offices of David R. Houston Pursuant to Bankruptcy Rule 9011* [ECF No. 1099] filed on May 29, 2020. All capitalized undefined terms used herein shall be ascribed the definitions set forth in the Sanctions Motion.

1 Morabito that leads his counsel to repeatedly assert falsehoods and misrepresentations believing  
 2 that this is acceptable conduct and will shield them from sanctions?

3 For example, Robison on behalf of Hartman and Houston wrote in the Opposition:

4 The Herbst Defendants unfairly attack Hartman and Houston by misconstruing  
 5 Hartman and Houston's argument regarding the BHI Check Register. The Herbst  
 6 Parties argue that Hartman and Houston aver that John Desmond and Gerald  
 7 Gordon obtained the Abandonment Order and Nondischarge Judgment by  
 8 defrauding the Court through Gordon's transmission of the BHI 2006 Check  
 9 Register. **Hartman and Houston Never made that argument.**

10 Rather, Hartman and Houston alleged that Gordon's August 22, 2019 e-  
 11 mail wherein he sent Hartman and Houston the purported BHI Check Register  
 12 was the first evidence that corroborated their theory that Gordon committed fraud  
 13 on the Court in 2010 and that demonstrated Wood fraudulently re-created certain  
 14 BHI financial statements. *See* Independent Motion, p. 25.

15 Opposition, p.14 (bold in original; underlining added).

16 So, apparently this Court and the Herbst Defendants misconstrued the assertion set forth  
 17 in the Injunction Complaint, ¶ 104. It was not fraud upon this Court as specifically alleged in ¶  
 18 104, but the perpetration by Mr. Gordon of fraud on the State Court in 2010. In other words,  
 19 Robison on behalf of Houston and Hartman is now asserting that Mr. Gordon intentionally  
 20 perpetrated fraud before Judge Adams.

21 However, Mr. Gordon was not counsel to the Herbst Defendants in the State Court  
 22 Action in 2010. Jones Vargas represented the Herbst Defendants. Mr. Gordon never appeared  
 23 before Judge Adams nor made any statements or took any actions in the State Court, let alone  
 24 with regard to check registers, etc. *See* Gordon Declaration, ¶ 3.

25 Obviously, Robison, and specifically Mr. Robison and Ms. Winston, and their clients,  
 26 Hartman and Houston, appreciate the consequences which can flow personally for Mr. Gordon if  
 27 this assertion were true. The Opposition cites to NC-DSH, Inc. v. Garner, 125 Nev. 647, 218  
 28 P.3d 853 (2009) regarding fraud upon the court. As set forth in the Opposition, this "embrace[s]  
 only that species of fraud which, does, or attempts to, subvert the integrity of the court itself, or  
 is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the  
 usual manner its impartial task of adjudging cases..." Opposition, pp. 10-11 (citing Garner, 125

1 Nev. at 654).

2 Yet, despite this acknowledgment of the seriousness of such an allegation and the heavy  
 3 burden of proof upon the party asserting the allegation, Hartman and Houston and Robison  
 4 doubled-down on the charge rather than acknowledge that the claim of the Rule 9011 Pleadings  
 5 had no support in fact or law. What makes this doubled-down assertion of fraud upon the State  
 6 Court so contemptuous and obscene is that Robison commenced its representation of Morabito  
 7 during the pendency of the State Court Action and executed the *Settlement Agreement and*  
 8 *Mutual Release* as counsel for Paul Morabito on November 30, 2011. Robison knew full well  
 9 when it filed the Opposition that Jones Vargas was counsel and that Mr. Gordon never appeared  
 10 before Judge Adams. But if Mr. Robison and Ms. Winston did not have personal knowledge of  
 11 the Robison representation of Morabito at that time, they were, at the very least, grossly  
 12 negligent in not investigating the revised assertion given the severity of the charge of fraud upon  
 13 the State Court. Thus, it is clear that Hartman, Houston, and their counsel, Robison, learned  
 14 nothing from this Court’s “reprimand,” and the imposition of monetary sanctions are necessary  
 15 and appropriate to deter the filing of frivolous papers, in bad faith, for improper purposes.<sup>2</sup>

16 **2. The Opposition Failed to Address the Substance of the Sanctions Motion and**  
**17 Blames the Herbst Defendants.**

18 The Opposition does not even address the numerous factual and legal deficiencies of the  
 19 Rule 9011 Pleadings detailed in the Sanctions Motion and rehashes the same arguments that the  
 20 State Court, this Court, the District Court, the BAP and the Ninth Circuit have all rejected as  
 21 meritless. For instance, how can counsel explain or justify the request in the Injunction  
 22 Complaint and the Stay Motion to enjoin William Leonard, the Chapter 7 Trustee, from taking  
 23 any further action to enforce judgments and claims against Morabito, Edward Bayuk and  
 24 Salvatore Morabito, but not name Mr. Leonard as a defendant in the Injunction Complaint? Yet,  
 25 when confronted with this fatal defect, there was never an attempt to amend the Injunction  
 26 Complaint or file a voluntary dismissal of the Injunction Complaint.

27 

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 28 <sup>2</sup> Robison, Hartman, and Houston should immediately withdraw their false accusation that Mr. Gordon committed  
 fraud upon the State Court.

1       Moreover, Hartman and Houston state that in raising the “In Limine Orders” they were  
 2 simply seeking to inform this Court that the working capital issue was not litigated during the  
 3 State Court Action, not that the Ind-CPA report was not confirmed by and relied upon by the  
 4 State Court. See Opposition, p. 12, n. 3. This is absurd and simply not true in light of their  
 5 assertions regarding the “In Limine Orders” in the: (i) *Reply to Opposition to Amend Motion for*  
 6 *Remand of Removed Proceeding; Request for Abstention* [ECF No. 23 in Adv Pro. No 20-05003-  
 7 GWZ]; (ii) the incorporation of pages 25-29 of the 60(d)(3) Motion which clearly asserts that the  
 8 Ind-CPA Report and the Working Capital Order were set aside and not considered by the State  
 9 Court; and (iii) Paragraph 56 of the Injunction Complaint referenced below.

10      With regard to the *Order Denying Amended Motion for Remand of Removed*  
 11 *Proceedings; Request for Abstention* (the “Remand Order”) [ECF No. 44 in Adv. Pro. No. 20-  
 12 05003-GWZ] and the *Order Granting Motion to Dismiss Complaint for Declaratory Judgment*  
 13 (the “Dismissal Order”) [ECF No. 52 in Adv. Pro. No. 20-05003-GWZ], the Opposition ignores  
 14 what has transpired since the Remand Order and Dismissal Order were entered. The Remand  
 15 Order was appealed to the BAP, and the appeal was dismissed upon the request of Morabito and  
 16 with the consent of the Herbst Defendants. See ECF No. 67 in Adv. Pro. No. 20-05003-GWZ.  
 17 The Dismissal Order was never appealed.

18      Furthermore, the Herbst Defendants did not “unfairly attack” Hartman and Houston or  
 19 “misconstrue” their arguments. In the Injunction Complaint, Houston and Hartman alleged the  
 20 following material allegations in support of their claim for declaratory relief that the  
 21 Abandonment Order and Nondischarge Judgment were the result of the Herbst Defendants’ (and  
 22 their counsels’) fraud upon this Court:

23      56. The Bankruptcy Court was misled and defrauded by the Herbst Parties  
 24 through their attorneys John Desmond and Gerald Gordon: the Ind-CPA Report  
 25 was set aside by In Limine Orders in 2009 and 2010 prior to the State Court Trial.  
 26 The Ind-CPA’s Working Capital Order was not considered or litigated by the  
 27 State Court.

28      57. In the main case as well as in both Adv. 15-05019 and Adv. 16-05043,  
 29 Gordon misled the Court intentionally, aware that Plaintiff’s then counsel did not

1 have access to the sealed 2010 State Court transcripts.

2 58. Gordon doubled down on his reliance of the factual ignorance of the Court  
3 and opposite counsel by sending a July 21, 2017 letter to Plaintiff's Counsel  
4 demanding \$140,000 in legal fees including \$42,000 for Desmond. Gordon  
5 asserted that the Ind-CPA was never set aside. This is false. Gerald Gordon wrote  
6 (Pg. 7 of the July 21, 2017 letter): "Contrary to Morabito's unsupported allegation,  
7 no portion of the I.A.'s Report was ever set aside or discounted by the State  
8 Court."

9 59. This Court relied on the validity of the Ind-CPA findings (Abandonment  
10 Order §7- 11; 13, 44, 47-50, 52 & 80) and Working Capital Order (Abandonment  
11 Order §13 & 14) in making his Abandonment Order.

10 60. The Abandonment Order is premised on the State Court's reliance on the Ind-  
11 CPA, and its Working Capital Order, which was vacated and sealed State Court  
12 record, rendering it inaccessible to Plaintiffs' counsel.

13 ...

14 104. Defendants had carried the scheme of fraud upon the court from the State  
15 Court into this court. In August 2019, Gordon submitted manufactured BHI 2006  
16 Check Register to Plaintiff's counsel seeking to have the U.S. Trustee seize  
17 \$125,000 in deposits with the Nevada Gaming Control Board that Gordon claims  
18 belongs to BHI.

19 105. On August 22, 2019, Gordon sent an email to Plaintiff's counsel attaching a  
20 purported BHI Check Register dated September 22, 2006 showing "legal and  
21 accounting" entries for a six-month period and a \$125,000 check dated June 13,  
22 2006 from BHI to the NGCB.

23 ...

24 112. The re-created BHI financials, fraudulently manufactured by Wood and now  
25 used by Gordon in the bankruptcy action is a direct continuance of the scheme to  
26 manipulate the proper unbiased and impartial administration of justice.

27 113. Gordon's 2019 release of the fraudulent check registry is further clear and  
28 convincing evidence that Wood fraudulently re-created certain BHI financial  
statements.

29 ...

30 135. In 2017, the fraud upon the courts continued unabated. The Abandonment  
31 Order relied on the 2010 State Court independent accountant ("Ind-CPA") and the  
32 Greene Report. The Bankruptcy Court was misled by John Desmond and Gerald  
33 Gordon, as the State Court Judge had issued four In Limine Orders, pre-trial,

regarding the Ind-CPA Working Capital Order as matters that would not be litigated by the State Court due to the Nevada Supreme Court Appeal against the Ind-CPA Working Capital Order.

• • •

140. Judge Adams had the same good faith reliance as this Court had of Gordon. Injunction Complaint, ¶¶ 56-60, 104-105, 112-113, 135, and 140.

As such, the Herbst Defendants argued in the Sanctions Motion that the request for declaratory relief that the Abandonment Order and Nondischarge Judgment were obtained by the Herbst Defendants' fraud was frivolous because there is no factual or legal basis supporting Morabito's material allegations that: (i) the Ind-CPA Report was "set aside" in the "In Limine Orders" or the Working Capital Order was never litigated before the State Court [see Sanctions Motion, pp. 28-31]; (ii) this Court relied upon the validity of the Ind-CPA findings and Working Capital Order in making the Abandonment Order [see id., p. 31]; (iii) the Herbst Defendants obtained the Abandonment Order and Nondischarge Judgment by defrauding this Court through Mr. Gordon's transmission of the BHI Check Register to Hartman [see id., pp. 31-32]; and (iv) the Nondischarge Judgment was based upon the State Court Judgment or Confession of Judgment [see id., pp. 32-34]. Thus, the Herbst Defendants did not "unfairly attack" or "misconstrue" anything and the Opposition makes clear that an order requiring that Hartman and Houston pay the Herbst Defendants' attorneys' fees and expenses related to the Rule 9011 Pleadings is necessary.

**B. Hartman and Houston Did Not Conduct a Reasonable Inquiry into the Facts and Law Prior to Filing the Rule 9011 Pleadings.**

This Court should give no weight to Hartman and Houston's unsupported allegations regarding their factual and legal inquiry prior to filing the Rule 9011 Pleadings and find, based upon the uncontested evidence submitted by the Herbst Defendants and on this Court's docket, that Hartman and Houston did not conduct a reasonable inquiry into the law and facts underpinning the Rule 9011 Pleadings.

First, Hartman and Houston's allegations that they (i) gathered the factual information from Morabito, and (ii) continued their investigation by reviewing the reports from three

1 “experts”: Randy Wagner, Victor Song, and Richard Speier, Jr., and conclusion that they “not  
 2 only rel[ied] on their client’s version of what occurred, but also independently investigated the  
 3 facts” are unsubstantiated. See Opposition, pp. 13-14. Hartman and Houston did not submit  
 4 declarations or documents evidencing that they undertook any investigation of the facts  
 5 underpinning the Rule 9011 Pleadings.

6 Second, even if this Court were to assume that Hartman and Houston’s unsupported  
 7 allegations regarding their factual inquiries were true, which it should not, simply reviewing the  
 8 “reports” of the “experts” was not in any way reasonable under the circumstances. These  
 9 individuals are not experts in legal matters such as fraud upon the court, declaratory relief, or  
 10 bankruptcy law, and their unqualified opinions and “reports” do not identify what specific  
 11 documents they even reviewed and did not address, for instance, that the matters asserted in the  
 12 60(d)(3) Motion regarding working capital and Walter A. Dwelle were raised by Morabito and  
 13 rejected by the Ind-CPA and Judge Adams in the State Court Action.

14 Third, nowhere in the Opposition do Hartman and Houston even allege that they  
 15 reviewed the Abandonment FF&CL [ECF No. 873], the Amended Findings of Fact and  
 16 Conclusions of Law in support of the Nondischarge Judgment [ECF No. 122 in Nondischarge  
 17 Action], this Court’s decision on Morabito’s FRCP 54(b) motion related to the Nondischarge  
 18 Judgment [ECF No. 124 in Nondischarge Action], or this Court’s December 20, 2018 oral ruling  
 19 on the registration motion [ECF No. 245 in the Nondischarge Action]. Had Hartman and  
 20 Houston conducted even a cursory review of the filings, orders and judgments of the State Court  
 21 and this Court upon which Morabito materially relies in the Rule 9011 Pleadings, they would  
 22 have known the Rule 9011 Pleadings should not have been filed.

23 Fourth, Hartman and Houston did not submit any admissible evidence as to their  
 24 investigation of the law upon which the Rule 9011 Pleadings relied. How is it that Hartman and  
 25 Houston, who “used their research and 40+ years of experience as reputable attorneys[,]” did not  
 26 discover prior to filing the Rule 9011 Pleadings that: (i) the “In Limine Order” were not limine  
 27 orders; (ii) Morabito could not obtain an injunction against the Trustee without naming him as a  
 28 party; (iii) state courts cannot enjoin federal courts; (iv) state courts cannot set aside federal court

1 orders or judgments; (v) the declaratory relief claims of the Injunction Complaint and 60(d)(3)  
 2 Motion were clearly barred by Nevada Supreme Court case law on claim preclusion involving  
 3 declaratory relief claims (Boca Park); and (vi) Morabito cannot establish independent standing  
 4 apart from the Morabito estate by generally concluding these are “independent claims,” while at  
 5 the same time making clear that “[t]he material facts supporting an intentional scheme to  
 6 perpetrate the fraud upon the court addressed in the [60(d)(3) Motion], all occurred prior to the  
 7 petition date of June 20, 2013.”

8 Hartman and Houston have provided no explanation under oath because they did nothing.  
 9 They simply filed the Rule 9011 Pleadings without conducting any investigation of the facts and  
 10 law underpinning the Rule 9011 Pleadings because, one can reasonably assume, Morabito told  
 11 them to.

12 **C. Absent the Imposition of Monetary Sanctions Under the Undisputed Circumstances, the Judicial System Does Not Properly Function.**

14 Hartman and Houston allege in the Opposition that they “have acknowledged their  
 15 mistakes from the beginning and have learned the importance of careful drafting.” See  
 16 Opposition, p. 17. However, Hartman and Houston have not acknowledged their mistakes; to the  
 17 contrary, Hartman and Houston have exacerbated their mistakes.

18 Years before the filing the Rule 9011 Pleadings, Mr. Gordon on behalf of the Herbst  
 19 Parties transmitted a letter dated July 21, 2017 along with nearly 800 pages of supporting  
 20 documentation (the “July 21 Letter”) to David Shemano and Frank Gilmore of Robison,  
 21 Morabito’s then counsel who filed the 2016 Complaint, which provided that the filing and  
 22 maintenance of the 2016 Complaint was in bad faith and vexatious, and caused the Herbst Parties  
 23 substantial harm, including attorneys’ fees, costs and other expenses, which would not have been  
 24 incurred had Shemano and Gilmore undertaken a reasonable investigation prior to the filing of  
 25 the 2016 Complaint. See Exhibit 1 to the Gordon Declaration. The July 21 Letter set forth the  
 26 investigation and due diligence conducted by the Herbst Parties regarding the allegations and  
 27 2016 Claims of the 2016 Complaint, which facts and conclusions were not previously provided  
 28 to this Court because of this Court’s application of the Bankruptcy Rule 7012(b)(6) standards to

1 the Standing/Abandonment Motion, 2017 Remand Motion, and the 2016 Complaint. See id.  
2 Notwithstanding that Hartman and Houston attached the July 21 Letter to the Stay Motion and  
3 the 60(d)(3) Motion and, thus, had full knowledge of its contents, including that Morabito raised  
4 objections to the Ind-CPA Report and allegations regarding Walter A. Dwelle and the Ind-CPA  
5 and State Court rejected his arguments regarding working capital and Walter A. Dwelle during  
6 the State Court Action, Hartman and Houston filed the Rule 9011 Pleadings based upon the same  
7 material allegations as the 2016 Complaint that were found to be not colorable or plausible by  
8 this Court in a decision affirmed by the BAP and Ninth Circuit.

9 On April 2, 2020, after the filing of the 60(d)(3) Motion, Injunction Complaint, and Stay  
10 Motion, Hartman and Houston received the Rule 9011 Letter from Mr. Gordon on behalf of the  
11 Herbst Defendants, which demanded, consistent with Bankruptcy Rule 9011, that Houston and  
12 Hartman: (i) withdraw the Stay Motion; (ii) withdraw the Remand Motion; (iii) agree to dismiss  
13 with prejudice the Injunction Complaint; and (iv) stipulate to entry of an order of the Bankruptcy  
14 Court denying the 60(d)(3) Motion with prejudice, within 21 days of receipt of the Rule 9011  
15 Letter. Hartman and Houston responded to the Rule 9011 Letter by simply regurgitating the  
16 allegations of the Rule 9011 Pleadings, providing no explanation regarding their actions as  
17 counsel for Morabito.

18 Then on May 1, 2020, the Herbst Defendants served Hartman and Houston with a draft of  
19 the Sanctions Motion, together with the exhibits, and demanded, consistent with Bankruptcy  
20 Rule 9011 and the Rule 9011 Letter, that Houston and Hartman: (i) withdraw the Stay Motion;  
21 (ii) withdraw the Remand Motion; (iii) agree to dismiss with prejudice the Injunction Complaint;  
22 and (iv) stipulate to entry of an order of the Bankruptcy Court denying the 60(d)(3) Motion with  
23 prejudice, all within 21 days of receipt of this Sanctions Motion. Hartman and Houston failed to  
24 respond and again refused to comply with the demands for withdrawal and dismissal of the Rule  
25 9011 Pleadings, thereby maintaining the Rule 9011 Pleadings with full knowledge of their  
26 factual and legal deficiencies and making the filing of the Sanctions Motion necessary.

27 Moreover, in their Opposition, Hartman and Houston not only failed to address the  
28 numerous deficiencies of the Rule 9011 Pleadings detailed in the Sanctions Motion but spent

1 most of the Opposition attacking the Herbst Defendants and rehashing the same legal principle  
2 and factual allegations that no one disputes, *i.e.*, that *Hazel* permits a claim for fraud upon the  
3 court and this Court and the BAP would not rule out the possibility (because it was not before  
4 them) that Morabito had independent standing to request a declaratory judgment for fraud upon  
5 the State Court provided it would be permitted under applicable law and was not premised upon  
6 property of the bankruptcy estate. Thus, Hartman and Houston's assertion that they have  
7 acknowledged their mistakes from the beginning is not supported by their actions. Hartman and  
8 Houston never withdrew or amended anything, thereby requiring the Herbst Defendants to  
9 continue to defend against frivolous claims and incur attorneys' fees and expenses relitigating  
10 matter already decided in 2010, then 2016, in decisions affirmed by the District Court, the BAP  
11 and the Ninth Circuit.

12 Furthermore, as this Court has already found, Hartman and Houston's continued reliance  
13 upon *Hazel* and this Court's statement regarding Morabito's alleged claim to independent  
14 standing to commence a declaratory relief claim for fraud upon the State Court do not in any way  
15 justify Hartman and Houston's filing and maintenance of the Rule 9011 Pleadings. Had  
16 Hartman and Houston read this Court's Abandonment FF&CL prior to filing the Rule 9011  
17 Pleadings, they would have known that this Court found the 2016 Claims were not only estate  
18 claims but were also found to be not colorable or plausible and could not survive a motion to  
19 dismiss pursuant to FRCP 12 in a decision affirmed by the BAP and the Ninth Circuit. Instead,  
20 Hartman and Houston filed the Rule 9011 Pleadings, relying upon the same factual allegations  
21 set forth in the 2016 Claims, and generally concluded that Morabito was asserting his  
22 independent claims.

23 Morabito is entitled to counsel and his day in court. However, when his attorneys do not  
24 comply with their professional obligations and duties owed to the Court, the judicial system does  
25 not and cannot properly function. Hartman and Houston either failed to conduct a reasonable  
26 factual and legal inquiry as required by Rule 9011 prior to filing the Rule 9011 Pleadings, or  
27 Hartman and Houston did and decided that their obligations to the profession and duties to the  
28 Court were less important than remaining under the control and direction of Morabito and

1 disregarding the dictates of Rule 9011, which, in either case, has resulted in substantial  
2 attorneys' and expenses. Given the new false assertion regarding Mr. Gordon's alleged fraud  
3 upon the State Court as well as the continued disregard of this Court's determinations, it is  
4 apparent that this also applies to Robison.

5 Under either circumstance, this Court must impose monetary sanctions upon Hartman  
6 and Houston. Otherwise, the judicial system does not function as it was intended.

7 **II.**  
8 **CONCLUSION**

9 Based upon foregoing, the Herbst Defendants respectfully request that the Court grant the  
10 Sanctions Motion in its entirety, overrule the Opposition, enter an order ordering that Hartman  
11 and Houston pay the attorneys' fees and expenses of the Herbst Defendants' counsel – Garman  
12 Turner Gordon LLP and Dickinson and Wright – related to the Rule 9011 Pleadings and all  
13 hearings and proceedings before the Court related thereto, and grant any other relief appropriate  
14 under the circumstances.

15 Dated this 31st day of December 2020.

16 GARMAN TURNER GORDON LLP

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